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08/717,042	09/20/96	PALLEY	I 30-3744CIP

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EXAMINER	
KOPSIDAS, N	
ART UNIT	PAPER NUMBER
3727	12

DATE MAILED: 06/03/98

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents

Office Action Summary

Application No.
08/717,042

Applicant(s)
Palley et al.

Examiner
Niki M. Kopsidas

Group Art Unit
3727



☒ Responsive to communication(s) filed on Mar 9, 1998

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-66 is/are pending in the application.

Of the above, claim(s) 12, 48-50, and 54-66 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-11, 13-47, and 51-53 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☒ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☒ received in Application No. (Series Code/Serial Number) 08/533,589.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4-7

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

☒ Substitute PTO-948

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed November 25, 1996 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Drawings

2. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

Specification

3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Election/Restriction

4. Applicant's election without traverse of Species IX (figures 9A-9E and 10A-10I) in Paper No. 11 is acknowledged.
5. Claims 12, 48-50 and 54-66 are withdrawn from further consideration by the examiner,

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37 CFR 1.142(b) as being drawn to a non-elected species. Election was made **without** traverse in Paper No. 11.

Claim Objections

6. Claim 35 is objected to because of the following informality: On line 1, "lest" should be changed to --least--. Appropriate correction is required.

Double Patenting

7. The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent. *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) and (c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1-11, 13-47 and 51-53 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6, 12-57 and 91-96 of copending

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Application No. 08/533,589 in view of Gettle et al. (U.S. 5,225,622). Application Serial No. 08/533,589 discloses the claimed invention except for the blast mitigating material. Gettle et al. teach that it is known to provide a container with aqueous foam (see line 11 of the Abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container claimed in Application Serial No. 08/533,589 with the aqueous foam of Gettle et al., in order to attenuate pressure waves.

This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1, 2, 8-11, 13, 15, 19, 33 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Galber (U.S. 4,915,291) in view of Gettle et al. Galber discloses the claimed invention except for the blast mitigating material. Gettle et al. teach that it is known to provide a container with aqueous foam (see line 11 of the Abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Galber with the aqueous foam of Gettle et al., in order to attenuate pressure waves. The material of the Galber container is considered fibrous.

11. Claims 1, 11, 14, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis (U.S. 0,674,009) in view of Gettle et al. Lewis discloses the claimed invention except for the blast mitigating material. Gettle et al. teach that it is known to provide a container with aqueous foam (see line

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11 of the Abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Lewis with the aqueous foam of Gettle et al., in order to attenuate pressure waves.

12. Claims 3-7, 16-18, 20-31 and 35-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Galber in view of Gettle et al., as applied to claim 1 and 33 above, and further in view of Prevorsek et al. (U.S. 5,545,455). The modified container of Galber discloses the claimed device except for the band material. Prevorsek et al. disclose that it is known in the art to make a container from layers comprising networks of fibers. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Galber with the fibrous material of Prevorsek et al., in order to make a container with improved penetration resistance.

The fibers of Prevorsek et al. are considered to be "substantially continuous" in length (see col. 8 ln. 17-45 of Prevorsek et al.). Prevorsek et al. disclose that the fibers have a tenacity of at least 15 grams/denier and a tensile modulus of at least 300 grams/denier (see col. 7 ln. 14-22). In col. 7 ln. 62 - col. 8 ln. 16, Prevorsek et al. teach that aramid fibers and glass fibers may be used to form the fibrous layers, and in col. 7 ln. 10-11 Prevorsek et al. disclose that polyolefin fibers may be used in the fibrous layer. The claimed matrix is disclosed in col. 8 ln. 17 - col. 9 ln. 38 of Prevorsek et al., in particular on line 3 of col. 9, a polyurethane matrix is disclosed.

The modified container of Galber does not specifically disclose the specific percent of the fibers which are considered to "substantially continuous". It would have been obvious to one having ordinary skill in the art at the time the invention was made to make a certain percent of the fibers substantially continuous depending on the what strength and rigidity is desirable for the container and, since it has been

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held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

13. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Prevorsek et al. in view of Lewis and Gettle et al. Prevorsek et al. do not disclose the specific shape of the container and for the aqueous foam, but Prevorsek et al. do teach the use of two or more reinforcing bands arranged at varying angles (see col. 10 lines 48-56). Lewis teaches that it is known to provide a container made of three bands having perpendicular longitudinal axes (see figure 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the reinforcing bands of Prevorsek et al. to structure a container as taught by Lewis, in order to form a container with increased strength.

Gettle et al. teach that it is known to provide a container with aqueous foam (see line 11 of the Abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Prevorsek et al. with the aqueous foam of Gettle et al., in order to attenuate pressure waves.

Regarding the density of the aqueous foam, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the foam of Gettle et al. with a density between 0.01 and 0.10 g/cm³, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

14. Claims 47 and 51-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Galber in view of Gettle et al. and Prevorsek et al. Galber discloses the claimed invention except for the blast mitigating material. Gettle et al. teach that it is known to provide a container with aqueous foam (see line 11 of the Abstract). It would have been obvious to one having ordinary skill in the art at the time the

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invention was made to provide the container of Galber with the aqueous foam of Gettle et al., in order to attenuate pressure waves. The material of the Galber container is considered fibrous.

The modified container of Galber discloses the claimed device except for the band material.

Prevorsek et al. disclose that it is known in the art to make a container from layers comprising networks of fibers. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Galber with the fibrous material of Prevorsek et al., in order to make a container with improved penetration resistance.

The fibers of Prevorsek et al. are considered to be "substantially continuous" in length (see col. 8 ln. 17-45 of Prevorsek et al.). Prevorsek et al. disclose that the fibers have a tenacity of at least 15 grams/denier and a tensile modulus of at least 300 grams/denier (see col. 7 ln. 14-22). In col. 7 ln. 62 - col. 8 ln. 16, Prevorsek et al. teach that aramid fibers and glass fibers may be used to form the fibrous layers, and in col. 7 ln. 10-11 Prevorsek et al. disclose that polyolefin fibers may be used in the fibrous layer. The claimed matrix is disclosed in col. 8 ln. 17 - col. 9 ln. 38 of Prevorsek et al., in particular on line 3 of col. 9, a polyurethane matrix is disclosed.


The modified container of Galber does not specifically disclose the specific percent of the fibers which are considered to "substantially continuous". It would have been obvious to one having ordinary skill in the art at the time the invention was made to make a certain percent of the fibers substantially continuous depending on the what strength and rigidity is desirable for the container and, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

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Conclusion

15. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703)305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into group 3720 will be promptly forwarded to the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Kopsidas whose telephone number is (703) 308-1606. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1148.


Niki M. Kopsidas/nmk
Patent Examiner
May 26, 1998


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